were the situation, Haroon could have no equity whatever. Not only would he be a volunteer, but he would also be coming into equity with unclean hands. It is not, however, necessary for me to make any finding on those lines, since I am satisfied that, even if he acted *bona fide* in the original purchase, his rights must be postponed to Nik Mah's. In view of this I order that Haroon's caveat on Lot 945 be removed and that thereupon the transfer to Nik Mah, if otherwise fit for regisration, be registered. I order also that Haroon do pay to Nik Mah her costs of this motion, but I award no costs to or against Mohamed.

Order accordingly.

MALAYAN THEATRES LTD.
v.
HARDIAL SINGH & THREE ORS.

[Court of Appeal (Brown, Ag. C.J. (Singapore), Foster Sutton, C.J. (F. of M.) and Spenser Wilkinson, J.) July 16, 1951]

[Singapore — Civil Appeal No. 2 of 1951]

Landlord and Tenant — Control of Rent Ordinance, s. 14(1)(m) — Possession — Reasonableness — Alternative accommodation — "Premises" — Construction of Ordinances — Duty of Court in.

The appellants (who were the defendants in the Court below) were statutory tenants of the Theatre Royal. They originally obtained a lease of the premises for one year from the 1st of June 1946. The appellants' manager agreed in evidence that upon the expiration of the lease there was no agreement for a monthly tenancy, and the appellants "just held over". The respondents purchased the theatre for $300,000 on the 5th of August 1948 and have been receiving from the appellants 10 per cent on their capital outlay by way of rent. The respondents' main business is a textile business. But as a side line they import Indian films from India, which they distribute to film exhibitors. They wanted possession of the Theatre Royal in order that they may themselves exhibit the films which they import. The appellants' business is that of film exhibitors. They operated seven other cinemas in Singapore, and were building another at the Naval Base. The learned trial Judge gave possession of the Theatre Royal to the respondents, saying, "Having considered all the facts of this case I am quite satisfied that it is reasonable that the plaintiffs who have been owners of the Theatre Royal since 5th August, 1948, and gave notice to quit at the end of 1948 should be put in possession of it."

The defendants appealed.

Held, allowing the appeal, that although at the trial evidence was led upon the question of reasonableness, and it was clear that the learned Judge applied his mind to that question, it was a question of fact, and was in the discretion of the Judge. But in applying the test of reasonableness all the facts must be taken into consideration, including the alternative accommodation which was available. And if the learned Judge misdirected himself upon the true construction of section 14(1)(m) in its application to business premises, and thus failed to appreciate the true character of the accommodation which the statute required as an alternative to the premises of which the appellants would be deprived by his order, the Court could not be satisfied that such might not also have affected his views on reasonableness. To this extent the question of reasonableness was dependent upon the question of suitable alternative accommodation, and the two questions could not be regarded as separate and distinct.

Cases referred to :—

(1) *Skinner v. Geary* (1931) 2 K.B. 546.
(2) *Reidy v. Walker* (1933) 2 K.B. 266.
(3) *McIntyre v. Hardcastle* (1948) 2 K.B. 82.
(4) *Rhodes v. Cornford* (1947) 2 All E.R. 601.
(5) *National Provident Institution v. Brown* 89 L.J.K.B. at p. 875.
(6) *Lutterell v. Addicott* (1946) 2 All E.R. 625.

CIVIL APPEAL.

F. R. N. H. Massey for the appellants.

Dr. C. H. Withers-Payne for the respondents.

Storr, J. : — The defendants who own and operate a number of cinemas and theatres were the tenants of the Theatre Royal, No. 635 North Bridge Road, Singapore, under an indenture of lease for one year from 1st June, 1946. In that lease there was a clause permitting them to apply for a renewal of the lease for a further 12 months on or before the 31st May, 1947. They did not apply within the time stipulated and the lease was not renewed, but at the end of their term they held over and became the monthly tenants of the then owners. On the 5th of August, 1948, while the defendants were still in possession of the premises as monthly tenants, the plaintiffs bought the Theatre Royal for a sum of $300,000 after the defendants had been offered the theatre at the same price but had not bought it, but were still negotiating. The plaintiffs wanted possession of the Theatre Royal, so that the 1st, 3rd and 4th plaintiffs could exhibit in the name of Gian Singh & Co. of Singapore, of which they are the sole partners, films that would be sent from India by the 2nd plaintiff who is a dealer in Indian films in Bombay. Notice to quit was served on the defendants on the 29th November, 1948, expiring on the 31st December, 1948. The defendants refused to vacate the premises and claimed to be statutory tenants, protected by the Control of Rent Ordinance No. 25 of 1947 (hereinafter referred to as the Ordinance). The plaintiffs also served on the defendants a notice to quit in relation to the statutory tenancy expiring on the 31st May, 1950, and claimed possession of the premises and, as the plaintiffs had accepted rent up to the 30th September, 1950, without prejudice to their notice to quit, mesne profits from the 1st October,

1950, until the date of possession. The facts as to the notices to quit and the premises were not disputed.

Paras 7, 8 and 9 of the Statement of Claim were by agreement with the defendants not proceeded with by the plaintiffs.

Mr. Elias for the plaintiffs based his claim on section 14 (1) (m) of the Ordinance and submitted that the defendants were not entitled to the protection of the Ordinance. He relied on 3 points. The first point was that the definition of "premises" in section 2 of the Ordinance does not include premises such as the Theatre Royal which is a cinema. Section 2 (*inter alia*) reads as follows :—

" 'Premises' means any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building in which persons are employed or work and any part of any premises let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord but does not include new premises built or completed after the commencement of this Ordinance."

On that point I have come to the conclusion that his submission cannot be sustained, as, to my mind, the definition which is a very comprehensive one is intended to cover every type of premises used as either dwelling houses or business premises where people are employed. I therefore hold that the definition of "premises" in the Ordinance does include a cinema such as the Theatre Royal.

Mr. Elias's second point that the defendants being a company could not remain in possession of the Theatre Royal, and on that point he cited numerous English authorities, including the cases of *Skinner v. Geary*[1] and *Reidy v. Walker*[2], based on the English Rent and Mortgage Interest Restriction Acts, which refer solely to dwelling houses, and from what Goddard, J. said, with regard to the decision in *Skinner v. Geary* which he followed in *Reidy v. Walker* :—

"As I read it, the decision in Skinner v. Geary lays down that the Rent Restriction Acts were intended for the protection of a person's home, not for the protection of some other rights which he may have. Protection of the home seems to be the whole policy and intention of the Acts. This legislation began in the war when it was desired to protect humble occupiers from being turned out of their homes or having rents heavily raised against them. The Court of Appeal lays down the proposition that before a person can become a statutory tenant his occupation must have an essentially domestic quality, and I read the case of Skinner v. Geary as showing that because a company cannot reside in the sense which is necessary for a statutory tenant its occupation can never acquire this domestic quality."

it is quite clear that the Court's reason for holding that a trading company could not be in possession of a dwelling house was that a company's occupation could not have the necessary essential domestic quality, neither could a dwelling house be considered its home or residence in the ordinary meaning of the word. On that point, therefore, I hold that the defendants are capable of being in possession of the Theatre Royal, and the submission fails.

His third point was that the plaintiffs were entitled, as landlords, to possession under section 14 (1) (m) of the Ordinance which reads as follows :—

"14 (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

(m) in any other case where the Court considers it reasonable that such an order or judgment be made or given and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect."

He submitted that as the plaintiffs had purchased this property as far back as 5th August, 1948, and had given notice to quit to the defendants in November, 1948, expiring on 31st December, 1948, which notice to quit had been ignored by the defendants who continued in possession as statutory tenants of the Theatre Royal, thereby preventing the plaintiffs from enjoying the possession of the theatre and the consequential profits of being in control of the films to be exhibited, it was only reasonable that the Court should make an order for possession. Further that the Court should on the facts consider itself satisfied that there was suitable alternative accommodation, because the defendents were in possession of 8 cinemas in Singapore, apart from the Theatre Royal, any one of which, but in particular the Rex Cinema in Mackenzie Road, the Sun Cinema or Grand Cinema, both in the New World, Jalan Besar, would be suitable for showing Indian (Hindustani and Tamil) first and second run films which it was the practice of the defendants to show at the Theatre Royal.

Mr. Mallal referred to the evidence of the 1st plaintiff who stated "Yes, if I get the theatre it will be Gian Singh & Co. (partners being 1st, 3rd and 4th plaintiffs) who will be exhibiting films and the man in Bombay (2nd plaintiff) will be buying the films" and submitted on the authority of *McIntyre v. Hardcastle*[3] that unless all the joint owners wished possession for themselves they were not entitled to an order. The application in that case was made under section 3 (1) and para (h) of Schedule I of the English Act of 1933, and the Court there held that, as the landlords could not bring themselves within para (h) of Schedule I on which they relied, they were not entitled to an order for possession. As I have already pointed out, the English Acts refer solely to dwelling houses and therefore I do not consider that any decision based on the fact that the

Courts are dealing with dwelling houses can have any application to cases relating to business premises protected by the Ordinance. In any event the present case is concerned with business premises and is based on section 14(1) (m) of the Ordinance and therefore any decision relating to dwelling houses in connection with section 14(1) (f) which closely resembles section 3(1) and para (h) of Schedule I of the English Act would, I think, not apply. Therefore I do not consider that in this particular case the judgment in *McIntyre v. Hardcastle* is applicable, neither do I think in any event it applies to an application for possession under section 14(1) (m) of the Ordinance.

Having considered all the facts of this case I am quite satisfied that it is reasonable that the plaintiffs who have been the owners of the Theatre Royal since 5th August, 1948, and gave notice to quit at the end of 1948 should be put in possession of it.

I must now consider whether I am satisfied that suitable alternative accommodation is available for the defendants or will be available for them when any order or judgment I may make or give takes effect. Now a cinema is a particular type of premises run for the purpose of entertaining the public and in a city like Singapore such premises are limited. This is not just a case of a tenant who is endeavouring to continue in possession of his premises because they are necessary for the running of his business; it is the case of a tenant who wishes to continue in possession because, in the words of the defendants' Manager, "we try to get as many theatres as possible". In other words, it is the case of a tenant who wishes to acquire and control an ever increasing number of cinemas in Singapore. I cannot think that the Ordinance was framed to protect tenants of this class.

In this case the 1st plaintiff in his evidence has shown, and in fact it was not disputed by the evidence of the defendants' Manager, that the defendants are in possession of 8 cinemas in Singapore other than the Theatre Royal. Further the Manager stated that the defendants were building a new cinema at the Naval Base, Singapore, which would be completed in a few months. Now the policy of what films should be shown in any particular cinema must be dictated by the person who has control of the cinema. It is therefore clear to me that in any of the 8 cinemas controlled by the defendants Indian films could be shown if the defendants so desired, and therefore I am satisfied that there is suitable alternative accommodation for the defendants in one of the other cinemas of which they are in possession.

As there is evidence, however, that they have commitments for the Theatre Royal, although it was admitted that all the commitments were entered into after the notice to quit expired on 31st December, 1948, and some even after this action was commenced, I consider that it is reasonable to suppose that such commitments may extend for the showing of films for another six months.

Mr. Mallal mentioned the question as to "greater hardship", but the question only arises if the application for possession is made under section 14(1) (f)— the present application is based on section 14(1) (m) and there the question of "greater hardship" does not arise. If, however, my opinion on that point is wrong, then on the facts of this case I hold that the greater hardship would be caused to the plaintiffs if I refused to make an order for possession.

For the reasons set out above, there will be judgment for the plaintiffs for (1) an order for possession to take effect as from the 1st November, 1951, (2) mesne profits at the rate of $2,500 per mensem as from the 1st October, 1950, to the date of possession and (3) costs.

From the above judgment the defendants appealed.

Brown, Ag. C.J. : — The appellants (who were the defendants in the Court below) are statutory tenants of the Theatre Royal. They originally obtained a lease of the premises for one year from the 1st of June 1946. The appellants' Manager agreed in evidence that upon the expiration of the lease there was no agreement for a monthly tenancy, and the appellants "just held over". The respondents purchased the theatre for $300,000 on the 5th of August 1948 and have been receiving from the appellants 10 per cent. on their capital outlay by way of rent. The respondents' main business is a textile business. But as a side line they import Indian films from India, which they distribute to film exhibitors. They now want possession of the Theatre Royal in order that they may themselves exhibit the films which they import. The appellants' business is that of film exhibitors. They now operate seven other cinemas in Singapore, and are building another at the Naval Base.

In asking for an order for possession the respondents rely upon section 14(1) (m) of the Control of Rent Ordinance, 1947, which empowers the Court to make an order for possession :—

> "Where the Court considers it reasonable that such an order or judgment should be made or given and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect."

Thus there are two requirements which have to be fulfilled. Firstly, the Court must consider it reasonable to make the order asked for. Secondly, the Court must be satisfied (a) that there is alternative accommodation; (b) that it is suitable and (c) that it is or will be available.

At the trial evidence was led upon the question of reasonableness, and it is clear that the learned Judge applied his mind to that question. It is a question of fact, and is in the discretion of the Judge. But in applying the test of reasonableness all the facts must be taken into consideration, including the alternative accommodation which is available: (*Rhodes v. Cornford*[4].) And if the learned Judge misdirected himself upon the true construction of section 14(1)(m) in its application to business premises, and thus failed to appreciate the true character of the accommodation which the statute requires as an alternative to the premises of which the appellants would be deprived by his order, we cannot be satisfied that such misdirection may not also have affected his views on reasonableness. To this extent the question of reasonableness is dependent upon the question of suitable alternative accommodation, and the two questions cannot be regarded as separate and distinct.

Upon the question of alternative accommodation, Dr. Withers-Payne on behalf of the respondents, has argued that this also is a question of fact and that as the learned Judge was satisfied that as a fact there was alternative accommodation, and that it was suitable and would be available, we ought not to interfere with his finding. But the question in this appeal is whether he arrived at his finding by a proper understanding of the accommodation which, upon its true construction, the Ordinance requires. The view taken by the learned Judge was that if the appellants want to show Indian films they have a number of cinemas in Singapore in which, by adjusting their policy, they can do so, and that the Ordinance was never intended to protect the tenants of business premises who have several other premises and who seek to take advantage of the Ordinance because, in the words of the appellants' manager, "we try to get as many theatres as possible". Dr. Withers-Payne urged upon us that the Ordinance was never intended to protect a monopoly. On the other hand, Mr. Massey on behalf of the appellants pointed out that if the view taken by the learned Judge was right the proprietor of a business who was the tenant of a chain of business premises could be deprived of one after the other until only one set of premises was left.

It may well be that when the Ordinance was enacted and made applicable to business premises by the wording of the definition of "premises", such a case as this was not envisaged. But that is a matter upon which we ought not to speculate. The two conflicting arguments to which I have referred indicate the difficulty, and the quandary, to which an attempt to speculate upon the intention of the Legislature may lead us. Our duty is to construe the Ordinance, and in approaching this matter I would respectfully adopt the following passage from the judgment of Rowlatt, J. in *National Provident Institution v. Brown*[5]:—

> "It may be that Parliament has passed certain specific enactments without appreciating their consequences. That is a matter for Parliament to rectify, if it can, and if it desires to. It is the business of the Courts to form their decisions by construction of the statutes, not by consideration of the effect of their decision on other subject-matters."

Now the premises which are the subject of the dispute are business premises. And in considering whether suitable alternative accommodation is available to the tenant it seems to me that it is accommodation which is suitable to the business which he now carries on at the premises that must be available. It is said that the business which the appellants carry on in these premises is the exhibition of Indian pictures, and that can equally well be done in one or more of their other theatres. But the appellants' business at the Theatre Royal consists of more than the mere act of projecting Indian films on to a screen. Their business consists of all matters which are ancillary to the exhibition of Indian films. They include the clientele from whom the profits of the business are derived; the employees (of whom there are 27 at the Theatre Royal) by whose labour the business is carried on; and the mechanical appliances which they use in their business. It is for such factors as these, which collectively constitute the appellant's business at the Theatre Royal, for which suitable alternative accommodation must, in my opinion, be available.

Dr. Withers-Payne relied on the case of *Lutterell v. Addicott*[6] as shewing that no weight should be given to these ancillary factors in considering whether suitable alternative accommodation is available. But that case was decided under the English Acts which do not apply to business premises, and the question in that case was whether there was suitable alternative accommodation for the tenant in a dwelling house. There the tenant was the tenant of two houses, of which the first had a cafe attached. The tenant lived in the first house, where she carried on the business of a cafe and guest house. The second house was used by her to accommodate guests when the first house was

full. In an action for the recovery of the second house it was held that suitable alternative accommodation as a dwelling house was available in the first, and that it would be reasonable to make an order for possession of the second. It would have been difficult to hold otherwise, since the first house consisted of five bed-rooms, a dining room, a lounge, a kitchen and bath-room, and the tenant was already living there and had been living there for years. This case illustrates the difficulty of having recourse to English decisions under an Act which applies only to dwelling houses, in interpreting our local Ordinance in its application to business premises.

Upon the view which I take of the true meaning of the appellants' business and of the various factors which together constitute their business for which suitable alternative accommodation must be available, the locality in which any suggested alternative accommodation is situate is important. One of the constituent factors in this business is the patrons, without whom it would not exist. The business of exhibiting Indian films caters for Indians only, and the Theatre Royal is situate in a predominently Indian area. Alternative accommodation which, for reasons of remoteness or for any other cause, would deter Indian audiences from continuing to patronise the appellants' business would not be suitable and would not, in my opinion, satisfy the requirement of the section. And I think that the onus lies upon the respondents to prove that alternative accommodation is or will be available which is suitable substantially to accommodate Indian audiences of approximately the same size and a substantial portion of the staff, the mechanical appliances and all those factors which together make up the appellants' business. In my opinion there is no evidence in this case to establish that such alternative accommodation is or will be available. Four of the appellants' other cinemas were suggested — the Sun, the Grand, the Rex and the one which is in the course of being built at the Naval Base. All, except the proposed cinema at the Naval Base, are now being used to show various films in various languages. The Naval Base is many miles from the town of Singapore. There is no evidence of what its capacity will be or of the price which will be charged for seats. But it is certain that, on account of the distance, whatever Indian audience may patronise it the Indian audience from the Theatre Royal will not. The Sun and the Grand are both in the New World Amusement Park. It is in evidence that this Park is situate in a predominantly Tamil area. But it is also in evidence that it is patronised mainly by Chinese and not by Indians, and "is not considered respectable from the point of view of Indians." The Rex is a luxury theatre, catering for Europeans and well-to-do Asians. It has a seating capacity of 1,332; the Theatre Royal has a seating capacity of 746. The prices of the seats are lower at the Theatre Royal than at the Rex, and the evidence is that "Indians cannot pay the higher prices at the Rex."

But even if it were practicable and possible to overcome the objections to which I have referred, it would only be possible to transfer the business from the Theatre Royal to one or more of these other theatres by displacing the business which the appellants are now carrying on at the theatre or theatres to which the business from the Theatre Royal is transferred. And if the appellants are to be deprived of one set of premises I cannot see that accommodation at another set of premises can be regarded as available within the meaning of the Ordinance if it is only available to them by displacing the business which they are now carrying on at that other set of premises.

It seems to me that if the learned Judge had given full consideration to the various factors which collectively constitute the appellants' business he could not, upon the evidence, have been "satisfied that there is suitable alternative accommodation for the defendants in one of the other cinemas of which they are in possession", because in my opinion no such evidence exists. I would therefore allow the appeal with costs here and in the Court below.

Foster Sutton, C.J. (F. of M.) : — I have had the opportunity of reading the judgment of Brown, Ag. Chief Justice. I entirely agree with his conclusions and have nothing to add.

Spenser Wilkinson, J. : — I agree and have nothing to add.

Appeal allowed.